

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 ANTHONY SALAZAR,

7 Plaintiff,

8 v.

9 CHAPLAIN CALDERIN,

10 Defendant.
11

Case No. 2:19-cv-001870-APG-BNW

ORDER

12 Presently before the court are two motions. First, Plaintiff filed a motion requesting that
13 the court authorize the presence of an assisting inmate at her¹ upcoming Inmate Early Mediation
14 Conference. (ECF No. 8.) This motion was filed on January 9, 2020. Defendant responded on
15 January 22, 2020 (ECF No. 14), and Plaintiff replied on February 7, 2020 (ECF No. 19). Second,
16 Plaintiff filed a motion requesting that the court continue the mediation (ECF No. 9) on January
17 9, 2020. Defendant did not respond to this motion.

18 **I. PLAINTIFF’S MOTION AUTHORIZING PRESENCE OF ASSISTING INMATE**

19 **A. The Parties’ Arguments**

20 Plaintiff requests that the court allow an assisting inmate to be present with her at her
21 upcoming mediation. Plaintiff explains that after filing her complaint and surviving screening on
22 claim two, she met a “paralegal inmate seasoned in civil litigation” (ECF No. 8 at 2.) Since
23 that time, this other inmate, Tony White, and Plaintiff have had extensive discussions about
24 Plaintiff’s case (*e.g.*, its strengths and weaknesses, prospects, settlement terms, etc.). (*Id.*) Plaintiff
25 states that she is “unskilled” in the law, and it is clear she believes she would benefit from Mr.

26
27 ¹ Plaintiff states that she is a male-to-female transgender individual and requests that the
28 court and parties refer to her using female pronouns. (ECF No. 8 at 1.) The court respects this
request and will endeavor to do so at all times.

1 White's assistance at her mediation. Accordingly, Plaintiff requests that the court allow Mr.
2 White to attend Plaintiff's mediation to assist her. (*Id.*) Plaintiff cites several cases (from the
3 Ninth Circuit and other jurisdictions) in support of her argument.

4 Defendant opposes Plaintiff's request to have Mr. White assist her at her mediation. (ECF
5 No. 14.) Defendant makes six arguments in support of its position: (1) If Mr. White assists
6 Plaintiff at her mediation, he will be engaging in the unauthorized practice of law, which is a
7 crime in Nevada. (2) Prison regulations do not allow inmates to assist one another at mediations.
8 (3) Plaintiff does not identify any special circumstances justifying the need for inmate assistance
9 at her mediation. (4) Plaintiff's request to have another inmate present at the mediation presents
10 confidentiality concerns. (5) Plaintiff and Mr. White's communications at the mediation would
11 not be protected by the attorney-client privilege, and Plaintiff likely does not appreciate the
12 implications of this fact. (6) Allowing inmates to assist one another at mediations raises safety
13 concerns. Prison regulations allow inmates to assist one another on their cases to an extent, but
14 inmates are not allowed to charge for such services. However, some inmates attempt to do so and
15 if these fees are not paid, safety issues can arise. (*Id.* at 3-6.)

16 Plaintiff's reply rejects all of Defendant's arguments. She argues that Mr. White would
17 not be engaged in the unauthorized practice of law, that the prison regulations permit inmates to
18 assist one another, and that no confidentiality and safety concerns exist. (ECF No. 19.) Plaintiff
19 also notes that special circumstances do exist justifying Mr. White's presence at her mediation.
20 (*See id.* at 4.) Plaintiff states that "to some extent her cognitive functions are compromised and
21 impacted by her persistent depression, distress, and anguish caused from her untreated gender
22 dysphoric condition, which at times becomes so significant and overwhelming so as to impair her
23 perception, judgment and rationales." (*Id.*)

24 **B. Analysis**

25 Neither party cited, and the court is unaware of, any controlling Ninth Circuit precedent
26 that specifically governs whether assisting inmates can be present at mediations. What controlling
27 law does exist relates to requiring prisons to give prisoners access to law libraries or allow
28 prisoners to assist one another (inside prisons) so that they have meaningful access to the court.

1 See, e.g., *Johnson v. Avery*, 393 U.S. 483, 490 (1969) (state must provide inmates with reasonable
2 alternative or allow inmates to assist one another with cases in the prison); *Lindquist v. Idaho*
3 *State Bd. of Corr.*, 776 F.2d 851, 855 (9th Cir. 1985) (“Relying on *Bounds*, we have held that a
4 prison must provide inmates with access to an adequate law library or, *in the alternative*, with
5 adequate assistance from persons trained in the law.”); *Storseth v. Spellman*, 654 F.2d 1349, 1355
6 (9th Cir. 1981) (“Inmate writ writers may assist other prisoners in the preparation of, and filing
7 of, petitions for post-conviction relief. No authority authorizes them to engage in the practice of
8 law by filing papers with the court as the inmate’s legal representative.”) (internal citations
9 omitted).

10 Here, it appears that Plaintiff will have meaningful access to the court (during the
11 mediation) without an assisting inmate being present. The prison has a law library and a policy
12 for allowing inmates to assist one another at the prison. (See ECF No. 14-1 (prisoner regulation
13 regarding inmate legal access).) Additionally, Plaintiff does not allege any other limitations that
14 would prevent her from having meaningful access to the court (despite the law library and inmate
15 assistance at the prison) if she was not allowed to have another inmate present during the
16 mediation (e.g., being illiterate or not speaking English). The court does note that in Plaintiff’s
17 reply brief, she states that she has depression from untreated gender dysphoria and impaired
18 judgment. (ECF No. 19 at 4.) However, the court does not believe that these factors will prevent
19 Plaintiff from meaningfully engaging in the judicial process during the mediation. This is so
20 because Plaintiff drafted and filed her initial complaint without the assistance of another inmate
21 and survived screening. (See ECF No. 8 at 1.) Accordingly, Plaintiff demonstrated that despite
22 whatever mental health issues she may be facing, she is able to advocate for herself in court.
23 Finally, the court notes that it is the mediator’s job, in part, to provide a candid assessment of
24 Plaintiff’s case to her and to explain the mediation process as it occurs.²

25
26
27 ² Plaintiff is encouraged to ask the mediator questions to ensure that she understands and is
28 comfortable with the process.

1 The court also reviewed the prison regulations cited by both parties. (ECF No. 14-1.) They
2 do not expressly permit inmates to assist one another at mediations. (*Id.* at 6-7.)

3 Because Plaintiff failed to show that she is entitled to have an inmate assistant present at
4 her mediation, the court will deny Plaintiff's motion. (ECF No. 8.)

5 **II. PLAINTIFF'S MOTION TO CONTINUE THE INMATE EARLY MEDIATION**
6 **CONFERENCE**

7 In light of the court's orders at ECF Nos. 18 and 20 continuing the Inmate Early
8 Mediation Conference from 2/28/2020 to 3/13/2020, Plaintiff's motion to continue the mediation
9 conference (ECF No. 9) is denied as moot.

10 **III. CONCLUSION AND ORDER**

11 Accordingly, IT IS ORDERED that Plaintiff's motion authorizing presence of assisting
12 inmate (ECF No. 8) is DENIED.

13 IT IS FURTHER ORDERED that Plaintiff's motion to continue the inmate early
14 mediation conference (ECF No. 9) is DENIED as moot.

15
16 DATED: February 24, 2020

17 

18 BREND A WEKSLER
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28